

# **EXHIBIT 35**

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a )  
Delaware corporation, ORACLE )  
USA, INC., a Colorado )  
corporation, and ORACLE )  
INTERNATIONAL CORPORATION, a )  
California corporation, )  
Plaintiffs, )  
vs. ) No. 07-CV-1658  
SAP AG, a German corporation, )  
SAP AMERICA, INC., a Delaware )  
corporation, TOMORROWNOW, )  
INC., a Texas corporation, and )  
DOES 1-50, inclusive, )  
Defendants. )  
\_\_\_\_\_  
)

VIDEOTAPED DEPOSITION OF

JOHN ZEPECKI

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TUESDAY, SEPTEMBER 9, 2008

HIGHLY CONFIDENTIAL

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-412271)

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09:31:45 18 Q. Is it fair to say that you were in charge

09:31:47 19 of the Enterprise Performance Management product

09:31:49 20 line?

09:31:51 21 A. During which time period?

09:31:52 22 Q. At any time at Peoplesoft.

09:31:54 23 A. Yes. At a time period in -- when I was

09:31:57 24 employed by Peoplesoft.

09:31:58 25 Q. And were you also in charge of the

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09:32:00 1 Financial Management Portal Solutions?

09:32:02 2 A. I was for a period of time.

09:32:05 3 Q. Were there other vice presidents of

09:32:07 4 development?

09:32:07 5 A. Yes.

09:32:08 6 Q. How many?

09:32:10 7 A. I don't recall specifically.

09:32:12 8 Q. Generally.

09:32:15 9 A. Oh, it varied at different points of time.

09:32:17 10 Q. Was it a hundred?

09:32:17 11 A. No.

09:32:19 12 Q. Was it two?

09:32:20 13 A. No.

09:32:20 14 Q. What's your best estimate?

09:32:22 15 A. My best estimate is somewhere between 10

09:32:27 16 and 20, with variation during different years.

09:32:33 17 Q. And to whom did you report?

09:32:35 18 A. During which time period?

09:32:36 19 Q. All time periods at Peoplesoft.

09:32:38 20 A. I initially reported to Chris Wong, then I

09:32:41 21 reported to Peter Gassner, then I reported to Chuck

09:32:46 22 Teller. I reported to Jasper Andersen for an

09:32:50 23 extremely short period of time. And then I reported

09:32:53 24 to Renee Lorton. I think that's --

09:32:56 25 Q. I didn't hear that last --

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09:32:58 1 A. Renee Lorton.  
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Q. When did you leave Peoplesoft?

09:57:03 16

A. I left Peoplesoft in September of 2004.

09:57:09 17

Q. Why did you leave?

09:57:12 18

A. I thought I had a good opportunity at SAP,

09:57:14 19

and I pursued it.

09:57:16 20

Q. How did that opportunity come about?

09:57:20 21

A. I contacted Shai Agassi, and he offered me

09:57:23 22

the opportunity.

09:57:24 23

09:57:26 24

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10:06:33 1

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10:06:40 3 Q. So in your new organizational structure,  
10:06:47 4 starting at the end of 2005 you just -- you reported  
10:06:53 5 directly to Mr. Agassi?

10:06:56 6 I'm going to have a problem with that all  
10:06:57 7 day.

10:06:58 8 A. Yeah. I reported to Mr. Agassi.

10:07:00 9 Q. Agassi.

10:07:01 10 A. Beginning sometime at the end of 2005.

10:07:05 11 Q. Did it change your job in any way?

10:07:08 12 A. Not that I recall.

10:07:11 13 Q. And when did that particular position end?

10:07:20 14 A. Roughly 1 year ago. I think October or  
10:07:24 15 November of last year.

10:07:27 16 Q. And what was your new role?

10:07:29 17 A. I was responsible for the assimilation of  
10:07:34 18 acquired companies and driving technology projects.

10:07:49 19 Q. To whom did you report in that role?

10:07:52 20 A. Jim Snabe.

10:07:57 21 Q. To whom does he report?

10:08:00 22 A. To -- whom does he report to during which  
10:08:04 23 time period?

10:08:05 24 Q. During the time period you were reporting  
10:08:06 25 to him.

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10:08:07 1 A. I currently report to him.  
10:08:09 2 Q. Who does Mr. Snabe report to?  
10:08:13 3 A. He's a member of our Executive Board  
10:08:16 4 currently.  
10:08:16 5  
10:08:18 6  
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MR. PICKETT: Q. Please turn to the page

13:14:31 24

ending -753. This is part of your response to

13:14:35 25

Mr. Agassi on the 21st.

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13:14:46 1 On the 5th paragraph near the middle of the  
13:14:50 2 page, it starts out: I am not sure how TomorrowNow.

13:14:53 3 Are you with me?

13:14:54 4 A. Yes.

13:14:55 5 Q. You state:

13:14:56 6 I am not sure how TomorrowNow gets access  
13:14:59 7 to Peoplesoft software, but it's very likely

13:15:01 8 that TomorrowNow is using the software

13:15:04 9 outside the contractual use rights granted to  
13:15:06 10 them, and these use rights could be

13:15:08 11 terminated by Oracle.

13:15:10 12 What was the basis for that statement to

13:15:12 13 Mr. Agassi?

13:15:16 14 A. I didn't know how TomorrowNow got its use  
13:15:20 15 rights. And I was concerned that they couldn't keep  
13:15:28 16 the use rights they had.

13:15:31 17 Q. What was your concern in that regard?

13:15:33 18 A. If there was no use rights, it would be  
13:15:36 19 difficult to provide a set of services around  
13:15:39 20 Peoplesoft software.

13:15:41 21 Q. Is that because they needed access to  
13:15:45 22 Peoplesoft software in order to create updates and  
13:15:51 23 bug fixes?

13:15:52 24 MR. McDONELL: Object to the form of the  
13:15:53 25 question.

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13:15:54 1 THE WITNESS: To provide services around a  
13:15:56 2 piece of software, if you can't work with the  
13:15:59 3 software at all, it's hard to provide any services  
13:16:02 4 at all around the software.  
13:16:04 5  
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13:16:08 8  
13:16:11 9  
13:16:14 10  
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1 CERTIFICATE OF REPORTER

2  
3 I, HOLLY THUMAN, a Certified Shorthand  
4 Reporter, hereby certify that the witness in the  
5 foregoing deposition was by me duly sworn to tell the  
6 truth, the whole truth, and nothing but the truth in the  
7 within-entitled cause; that said deposition was taken  
8 down in shorthand by me, a disinterested person, at the  
9 time and place therein stated, and that the testimony of  
10 the said witness was thereafter reduced to typewriting,  
11 by computer, under my direction and supervision;

12 That before completion of the deposition,  
13 review of the transcript [X] was [ ] was not requested.  
14 If requested, any changes made by the deponent (and  
15 provided to the reporter) during the period allowed are  
appended hereto.

16 I further certify that I am not of counsel or  
17 attorney for either or any of the parties to the said  
18 deposition, nor in any way interested in the event of  
19 this cause, and that I am not related to any of the  
20 parties thereto.

21

22 DATED

September 11, 2008.

23

24

HOLLY THUMAN, CSR No. 6834

25

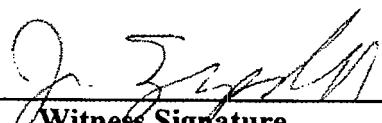
**Corrections to the Transcript of the Deposition of**

**John Zepecki**

**Taken on September 9, 2008**

**Volume 1, pages 1 - 348**

<b>Page</b>	<b>Line(s)</b>	<b>Reads</b>	<b>Should Read</b>
102	14	"Sydney"	"Sydney"
109	7	"Sidney"	"Sydney"
133	22	"late"	delete "late"
297	21	"Step 3"	"Step 3"



**Witness Signature**

*10/8/08*

**Date**